

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rate Adjustment Due to Extraordinary or
Exceptional Circumstances

Docket No. R2013-11

PUBLIC REPRESENTATIVE REPLY COMMENTS IN RESPONSE TO THE
EXIGENT REQUEST OF THE UNITED STATES POSTAL SERVICE

(December 6, 2013)

I. INTRODUCTION

On September 26, 2013, the United States Postal Service (Postal Service) filed a request with the Postal Regulatory Commission (Commission) for authorization to increase rates for market dominant products, which exceed the otherwise applicable limitations allowed by 39 U.S.C. § 3622(d)(1)(A) and 39 CFR § 3010.11.¹ The Postal Service filed this Request pursuant to 39 U.S.C. § 3622(d)(1)(E) and 39 CFR § 3010.60 *et seq.*, the provisions of the United States Code and the Commission's rules applicable to rate adjustments in "exigent" circumstances. The Public Representative respectfully submits the following reply comments as permitted by Order No. 1847.²

¹ Renewed Exigent Request of the United States Postal Service in Response to Commission Order No. 1059, September 26, 2013 (Request).

² Notice and Order Concerning Exigent Request, September 30, 2013 (Order No. 1847). See *also*, Ruling Adjusting Procedural Schedule, October 17, 2013 (P.O. Ruling R2013-11/1).

II. COMMENTS RECEIVED

The Commission has received constructive comments from a variety of interests that cover most issues of concern with the Postal Service's request for market dominant price increases under exigent circumstances. The Public Representative agrees with the tenor of the majority of comments. Where there is (minor) disagreement, the Public Representative understands that each commenter is responding to the exigent request from its own perspective, which does not always coincide with that of the Public Representative.

The following commenters do not support approval of the Postal Service's Request as submitted. Most voice an opinion that the Request should be rejected. Some call for substantial modification of the request before it could be approved. Some ask the Postal Service to consider other avenues of meeting its financial needs.

- Comments of American Bankers Association, November 26, 2013
- Comments of Boardroom, Inc., November 27, 2013
- Comments in Opposition to USPS Renewed Request to Increase Postal Rates Due to Asserted Exigent Circumstances, Docket R2013-11, November 26, 2013 [Financial Services Roundtable; National Association of Mutual Insurance Companies]
- Initial Comments of the Greeting Card Association, November 26, 2013; Greeting Card Association Notice of Errata, December 3, 2013
- Initial Comments Of MPA—The Association of Magazine Media, Association for Postal Commerce, The American Catalog Mailers Association, Inc., Direct Marketing Association, Inc., Alliance of Nonprofit Mailers, Association of Marketing Service Providers, Major Mailers Association, National Newspaper Association, Printing Industries of America, Quad/Graphics, Inc., R.R. Donnelley, Software & Information Industry Association/American Business Media, and Time Inc., November 26, 2013 (MPA Comments)

- Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement in Opposition to Exigent Rate Increase, November 26, 2013
- Comments of the National Postal Policy Council, the Major Mailers Association, and the National Association of Presort Mailers in Connection with the Attached Statement of Lawrence G. Buc, November 26, 2013
- Comments of Pitney Bowes Inc., November 26, 2013
- Public Representative Comments in Response to the Exigent Request of the United States Postal Service, November 26, 2013; Notice of Revisions to Public Representative Comments in Response to the Exigent Request of the United States Postal Service—Errata, December 2, 2013
- Comments of Sacred Heart Southern Missions, November 25, 2013
- Comments of the Saturation Mailers Coalition; Small Business Legislative Council; Association of Free Community Papers; Independent Free Papers of America; Free Community Papers of Florida, Inc.; Midwest Free Community Papers Association; Wisconsin Community Papers; Texas Community Newspaper Association; Free Community Papers of New York; Mid-Atlantic Community Papers Association; Minnesota Free Papers Association; Community Papers of Michigan; Southeastern Advertising Publishers Association; Pacific Northwest Association of Want Ads Newspapers; and Community Papers of New England, November 27, 2013
- SIIA/ABM Initial Comments to PRC on Docket No. R2013-11, November 26, 2013 [Software & Information Industry Association; American Business Media]
- Initial Comments of United Parcel Service on Renewed Exigent Request of the United States Postal Service, November 26, 2013
- Initial Comments of Valassis Direct Mail, Inc., November 26, 2013
- Initial Comments of Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc., November 26, 2013; Errata to Initial Comments of Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc., December 5, 2013

One commenter supports approval of the Postal Service's Request as submitted.

- Comments of the National Postal Mail Handlers Union in Support of Postal Service Request for Rate Adjustment, November 27, 2013

III. SUMMARY OF PUBLIC REPRESENTATIVE'S POSITION

The Public Representative continues to believe the Postal Service's Request is fundamentally flawed and must be rejected. The Postal Service has supported a causal connection between its liquidity/cash flow issues and the additional funding it seeks through its Request. However, the Commission has yet to determine whether the business as usual liquidity/cash flow issues described in this docket are fundamentally different from those described in Docket No. R2010-4, such that they can be considered exigent events. The Public Representative contends they are not.

The Commission has determined the December 2007 through June 2009 recession can be considered an exigent event. However, the Postal Service has not made the necessary causal connection between the recession and the additional funding it seeks through its Request. The funding request is disproportionately high compared to the harm caused by the recession alone (isolated from electronic diversion). Furthermore, the recession may have been a contributing factor to the Postal Service's cash flow/liquidity issues, but it is a minor factor when compared with the Postal Service Retiree Health Benefits Fund funding issue and electronic diversion.

The Postal Service has not estimated the total financial effect from volume losses due to the recession. It bases its Request on losses from a single somewhat arbitrary year. It has no estimate for when the losses due to the exigent event (the recession) will ever end. The annual losses that it does estimate do not convincingly distinguish between losses due to the recession and losses due to other factors, such as electronic diversion.

The Postal Service frames its Request to leave open the possibility it will return for additional funding based on the remaining FY 2012 losses, or based on entirely different fiscal year losses. If this were allowed, it would be precedent-setting, lead to uncertainty in rates, and end price cap regulation.

The Postal Service sets no limit on the time the proposed exigent prices will remain in effect. For all practical purposes, the prices are permanently added to the rate base. This is inconsistent with being remunerated for an exigent loss, and does not provide any incentive for the Postal Service to “recover” from the exigent circumstance. However, it is consistent with addressing business as usual liquidity/cash flow issues. It also will pay the Postal Service, forever, for mail pieces that might never return to the postal system.

The Request does not address postal products that are being offered at a price less than what it costs the Postal Service to provide. It does not address inefficient worksharing passthroughs that provide improper pricing signals. It does not give adequate consideration to raising competitive prices to improve the Postal Service’s financial condition. Each of these items needs to be addressed.

IV. COMMENT ON MPA PROPOSAL

MPA suggests that the Postal Service might be compensated for losses caused by the 2007-2009 recession. MPA Comments at 52-53. It sets an upper bound on compensation by estimating total recession related losses in FY 2013 and FY 2014 of \$702 million. It suggests that the Postal Service be allowed to recover this amount over a fixed two-year period (\$351 million per year). *Id.* MPA further contends, however, that the Postal Service should not be allowed to recover for past losses. *Id.* at 54.

The Public Representative supports the idea that, in most instances, exigent relief should be provided over a fixed period of time, and not open-ended. The Public Representative further suggests administering exigent funding in the form of a surcharge that could easily be rescinded after expiration of the fixed period of time. This discourages the Postal Service from seeking compensation to rebuild a network to handle previous mail volumes that are extremely unlikely ever to return. Similarly, the Postal Service should not be “permanently” compensated for mail pieces that will no longer be in the system, and do nothing to adjust its network to the new normal.

However, the Public Representative does not agree with MPA that prior year's losses are not recoverable. The Public Representative would use an estimate of the total losses over the entire recessionary period as a starting point to determine an appropriate amount of "temporary" recovery. As discussed in the Public Representative comments, allowances also would be made for "one-time" restructuring costs related to recovering from the exigency.

V. CONCLUSION

Pricing requests to address exigent circumstances should be filed as a last resort; a matter of survival. They should not be filed to slightly improve business as usual cash flow/liquidity issues. If the Postal Service was primarily concerned with harm caused by the recession (as opposed to cash flow/liquidity issues), its Request should have focused on the recession, provided a plan for addressing the recessionary effects, and estimated the total revenue required to implement its recovery plan. This would have justified "temporary" funding (based on lost mail volume) to allow time to adjust its network, and "one-time" funding to adjust its network to accommodate future mail volumes due to the recessionary effects.

The Public Representative submits the Postal Service has not justified its exigent request. Other commenters may have taken different approaches to analyzing the Postal Service's Request, but the vast majority of commenters came to the same conclusion, that the Request as submitted is not justified, and should not be approved.

The Public Representative respectfully submits the foregoing reply comments for the Commission's consideration.

Respectfully submitted,

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